IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10256 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

==========

J K TAJPURIA - Petitioner(s)
Versus
HIGH COURT OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR GM JOSHI for Petitioner(s) : 1,
MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
LAW OFFICER BRANCH for Respondent(s) : 1 - 2.
MR JB PARDIWALA for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/03/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner who was serving as Shirestedar / Court Master in the City Civil Court, Ahmedabad has prayed for an appropriate order and / or direction quashing and setting aside the order dated 19.09.1996 at Annexure – 'K' passed by the High Court of Gujarat on its Administrative side in Appeal No. 16 of 1995 preferred by the petitioner against the order dated 31.03.1995 passed by the Learned Principal Judge, City Civil Court, Ahmedabad (Disciplinary Authority), by which the petitioner came to be dismissed from service.

2. Facts in nutshell leading to the present Special Civil Application are as under:

That the petitioner was serving as Shirestedar (Court Master) at City Civil Court, Ahmedabad and at the relevant time he was working as such in the Court of Shri R.M.Atodaria, Judge, City Civil Court, Ahmedabad from 02.02.1997 to 02.10.1997, that; a chargesheet came to be issued on 01.08.1992 and the following charges were levelled against the petitioner by Exhibit – 2 to the chargesheet:

(1) That the delinquent committed an act of serious dereliction of duty by intentionally causing disappearance of Ex. 50 in Civil Misc. Application No. 200/ 1987.

(2) It is also alleged against the deliquent that in the Roznama of said Civil Misc. Application No. 200/1987 it was recorded

on 30.06.1988 that “all stamps are punched and all exhibits are found, correct except Ex.50”. Inspite of the same the said matter was forwarded to the Record Department. Therefore, the Misc. Departmental returned the said matter by Javak No. 840/98 dated 08.08.1988 pointing out that Exh. 50 (withdrawal purshis) could not be found from the record with a request to rectify the defect. A note in that regard was forwarded to the Superintendent, Misc. Department along with the record of the case. In turn the Superintendent, Misc. Department returned the case to the delinquent by Javak No. 395/89 dated 03.04.1989 and it was pointed out to the delinquent that the matter had already been forwarded to him on 17.09.1988 for rectifying the defect but the matter was returned without rectifying the defect. The delinquent retained with him the matter till August, 1991 without rectifying the defect and that the delinquent made an endorsement that the matter of Civil Misc. Application No. 200/87 was conducted along with Civil Misc. Application No. 132/86 and therefore, there was possibility that through oversight Ex. 50 could have been kept along with the record of Civil Misc. Application No. 132/86. Endoresement was further made by the delinquent that the required rectification would be done after examining the record of Civil Misc. Application No. 132 of 1986. However, the delinquent neither on 03.04.1989 nor thereafter rectified the defect and retained with him the record till August, 1991 and by doing so, the delinquent committed an act of serious negligence towards his duty.

(3) It is further alleged against the delinquent that in Civil Misc.

Application No. 132/86 several applications bearing Exhibit No.69, 77, 94, 95, 96, 97,101,102,104,107 and 019 were produced and exhibited. On all these applications the Court passed an order on 22.03.1988. However, no mention was made in the Roznama on 22.03.1988 regarding orders which had been passed by the Court and by doing so, the delinquent committed an act of serious negligence towards his duty.

(4) It is further alleged against the delinquent that the Court passed an order on 25.01.1988 on the application for taking the matter on board. The delinquent obtained the order of the Court on 25.02.1987 on application given by Arvindkumar for withdrawing the documents relating to guarantee. The application dated 19.03.1987 of opponent No.4 as well as the application dated 19.03.1987 of the opponent for expeditious hearing of the matter as well as the application dated 11.02.1988 of the Advocate Mr. B.D.Shah on which the Court passed an order on the same day. It was the duty of the delinquent to see that all these applications were exhibited. However, by not exhibiting the same at the relevant time the delinquent has committed an act of serious negligence towards his duty.

(5) It is further alleged that in the Roznama of Civil Misc. Application No. 132/86 the delinquent mentioned that "purshis for withdrawal and etc." against Ex. 114. However, the application dated 25.01.1988 of the opponent on which Ex. 114 has been mentioned was not in fact Ex. 114 because by Javak No. 381 of 1988 dated 22.03.1988 was a yadi

which was addressed to the Manager, Oriental Bank as well as the Nazar and in that yadi reference to relief Clauses No.2 and 3 as contained in Purshis Ex. 114 has been made and there was no consistency regard the order passed by Court on 22.03.1988 on Ex. 114. It is further alleged that purshis Ex. 114 which was an important document was initially caused to disappear by the delinquent and by doing so, the delinquent committed an act of serious dereliction of duty.

(6) Civil Suit No. 5791 of 1987 was filed on 15.10.1987 by Vibhushit Trambaklal Oza as the sole proprietor of the firm of contractor Jagannath Dholabhai against the partnership firm in the name and style of Payal Corporation for recovering a sum of Rs. 9600/- from the firm's partners Arvindkumar Maneklal Tailor and Rajubhai Maneklal Tailor. The said defendants were parties to Civil Misc. Application No. 132/86 and 200/87 which were pending in the Court of the learned Judge Shri Atodaria (as he then was), Arvind Tailor and Raju Tailor who were carrying on the business in the name of Premal Associates as building contractors were the parties to aforesaid Civil Misc. Application and that during that time the delinquent came in to contact with them. Not only that but the delinquent purchased one tenement of 90 Sq.yards of the value of Rs. 1,00,000/- being Tenement No.A/1 in Parulate Cooperative Housing Society Limited situated on Sola Road, Near Bhuyangdev Cross Roads from Sunil Arvindkumar Tailor who was the son of Arvindkumar Tailor and delinquent took the possession of the same on 10.10.1986. It is further alleged that Summary Suit was filed against them but the same had not been

alloted to any Court as the Suit was still unripe. Inspite of the same with a view to ensuring that no decree may be passed in that suit the delinquent some how obtained the possession of the suit with *mala fide* intention of helping the defendants and that the delinquent kept in his possession the record of that suit from 15.11.1989 till 18.09.1991 and by doing so the delinquent committed an act of serious dereliction of duty.

(7) It is further alleged against the delinquent that Civil Suit No. 6582 of 1988 was instituted by Ashok Deviprasad Pandya as the Secretary of Dream World Social Club Private Limited against State of Gujarat and the Police Commissioner of Ahmedabad. The application for injunction Ex.5 was also made in the suit. On the back side of this application for injunction the learned Judge Shri Atodaria (as he then was) passed an order in the following terms :

"Issue notice to other side returnable on 26.12.1988. Urgent process.".

The above order was passed on 20.12.1988. Thereafter, on 26.12.1988, the learned Judge Shri A.N. Divecha as he then was passed an order as follows:

"The Notice of Motion to be placed on Board for hearing in due course."

Inspite of the order passed, on 29.12.1988 N.M.Board containing the mention of above suit was sent to the Court

and that on 29.12.1988 itself the delinquent i his had writings recorded an order in the following terms below N.M.

Order

Heard.

L.A. For the parties Advocates. Read the application and affidavits. In this case, in the interest of justice interim relief is granted as prayed for. The defendants are restrained from disturbing the plaintiff's activities in absence of information with regard to the illegal activities being carried on in the plaintiff's premises. The defendants would be at liberty to enter the plaintiff's premises on information as based to verify as to what activities are being carried on and also to seize articles, machines used in illegal activities. This order granted till hearing and disposal of the suit.

29.12.1988 (R.M.Atodaria),
Ch. Judge, Ct.No. 14.

Above order did not contain the signature of Shri Atodaria. After writing the above order on 29.12.1988 the delinquent retained the matter with him till 09.01.1990 and thereafter, returned the same to Civil Department. It is further alleged against the delinquent that Shri G.N.Parekh, Superintendent, Civil Board Department passed a remark in the margin of the Roznama of that case and that the delinquent retained with him this matter till September, 1991 without obtaining the signature of the learned Judge

and by doing so, the delinquent committed an act of serious dereliction of duty.

(8) It is further alleged against the delinquent that the aforesaid acts committed by him were dishonest and that the same amounted to serious dereliction of duty and that the said act committed by the delinquent were not befitting the Government Servant and that the same were unreasonable and amounted to misconduct on the part of the delinquent.

The plaintiff filed his written statement on 07.10.1992 denying all the allegations made against him. Inquiry Officer was appointed. After conclusion of departmental inquiry, Inquiry Officer submitted his report by holding that wrongful acts committed by the delinquent can be termed to be of serious misconduct not befitting the Government Servant. The Inquiry Officer also observed that these are not the acts of omission or lapses but a positive act of misconduct and therefore, it would be too mild an approach to say that these acts were mere dereliction of duty or negligence of duty. The Disciplinary Authority agreed with the findings of the learned Inquiry Officer and by notice dated 26.07.1994, the petitioner was called upon to show cause why penalty of dismissal from service is not imposed. The said notice was along with report of the Inquiry Officer. Thereafter, after giving an opportunity and considering the reply submitted by the petitioner to the

show cause notice of penalty, the Disciplinary Authority i.e. Principal Judge, City Civil Court, Ahmedabad passed impugned order dated 31.03.1995 dismissing the petitioner from the service. Being aggrieved and dissatisfied with the order passed by the Disciplinary Authority and Principal Judge, City Civil Court, Ahmedabad, the petitioner preferred Appeal before the Appellate Authority i.e. Administrative side of the High Court of Gujarat being Departmental Appeal No. 16 of 1995 and by order dated 19.09.1996, the High Court of Gujarat on administrative side dismissed the said departmental appeal confirming the order dated 31.03.1995 passed by the Disciplinary Authority and Principal Judge, City Civil Court, Ahmedabad by which the petitioner is dismissed from service. The petitioner, has therefore, preferred present Special Civil Application under Article 226 of the Constitution of India.

3. Shri A.S.Supheia, learned Advocate appearing on behalf of the petitioner has vehemently submitted that the petitioner was not given fullest opportunity to represent his case and to cross examine the witness and the petitioner was also not permitted to engage lawyer to assist him. It is also further submitted by them that the Appellate Authority has not considered all the points which were raised in the Appeal memo and the Appellate Authority ought to have dealt with and considered all the points separately and specific findings *qua* each ground should have been given by the Appellate Authority. It is further

submitted that on plain reading of the charges, attributed / alleged against the petitioner show intention on the part of the petitioner is *mens rea* in the form of intention. It is submitted that when the Inquiry Officer has recorded the findings that there was no *mala fide* intention on the part of the petitioner, no further inquiry into the facts would be necessary simply because *mens rea* is absent. It is submitted that in view of the fact that no bad intention was found, punishment of dismissal was not warranted. It is submitted that ground (f) in Appeal Memo has not been considered by the Disciplinary Authority with regard to disproportionate punishment of dismissal and therefore, it is requested to allow the present Special Civil Application.

4. Shri Supheia, learned Advocate appearing on behalf of the petitioner has relied upon judgment of the Hon'ble Supreme Court in the case of ***Director (Marketing), Indian Oil Corporation V/s. Santosh Kumar*** reported in ***2006 AIR SCW 2849*** in support of his submission that the Appellate Authority ought to have given specific finding *qua* each ground raised in the appeal memo. Shri Supeheia, learned Advocate has also relied upon decision of the Hon'ble Supreme Court in the case of ***Narinder Mohan Arya v/s. United India Insurance Ltd. & Ors*** reported in ***2006 AIR SCW 1969*** more particularly paragraph Nos. 33,34, 36 and 37 of the said decision. Therefore, it is requested to allow the present Special Civil Application as prayed for.

5. The petition is opposed by the respondents. Shri J.B.Pardiwala, learned Advocate has appeared on behalf of the High Court of Gujarat on Administrative Side and Shri Dipen Desai, learned Assistant Government Pleader has appeared on behalf of respondent No.2.

6. Shri Pardiwala, learned Advocate has submitted that the Appellate Authority has considered all the grounds and has passed detailed speaking order, therefore, it cannot be said that the Appellate Authority has not considered all the grounds and therefore, the order is vitiated. While relying upon the findings and the observations of the Inquiry Officer more particularly, paragraph Nos. 7 and 8 of the Inquiry Report, it is submitted that fullest opportunity was given to the delinquent to examine the witness as well as to cross examine witnesses examined on behalf of the Department. It is submitted that after examining one witness – Induben Thakkar (Ex. 52) by purisis, the delinquent declared that he did not want to further examine any other witness and closed his evidence. Therefore, it cannot be said that the petitioner was not given any opportunity to examine the defense witnesses as well as to cross examine witness. So far as the contention on behalf of the petitioner that he was not permitted to engage lawyer, it is submitted that delinquent had engaged a lawyer. However, subsequently, during inquiry proceedings, the petitioner requested to

dispense with the services of the lawyer orally and participated in the inquiry and the advocate appearing on behalf of the delinquent subsequently retired. At the stage of arguments the petitioner passed a pursis that he does not desire to advance any oral arguments but his written statement be treated as arguments advanced by him. Therefore, it is submitted that the contention of behalf of the petitioner that the petitioner was not permitted to engage lawyer is factually incorrect.

7. Shri Pardiwala, learned Advocate has relied upon following decisions of the Hon'ble Supreme Court in support of his submission with regard to scope of judicial review in the departmental proceedings and also with regard to punishment by the Disciplinary Authority:

(1) Y.P.Sarabhai v/s. Union Bank of India reported in AIR 2006 SC 2316;
(2) Government of A.P. & Ors. V/s. Mohd. Nasrullah Khan reported in AIR 2006 SC 1214;
(3) Narinder Mohan Arya v/s. United India Insurance Co. Ltd. & Ors. reported in 2006 AIR SCW 1969; and
(4) Unreported judgment dated 10.05.2005 of the Division Bench of this Court in the case of J.H.Joshi v/s. State of Gujarat. in Special Civil Application No. 5691 of 2002.

8. Learned Advocates appearing on behalf of the respondents have submitted that in the facts and circumstances of the case more

particularly findings of the Inquiry Officer and the charges proved against the petitioner which are of serious nature by which the petitioner cannot be continued as a Court Officer being sensitive post and full of responsibility post, it cannot be said that the order of dismissal is in any way illegal or disproportionate to the charges/misconduct proved against the petitioner. Therefore, it is requested to dismiss the present Special Civil Application.

9. Heard the learned Advocates appearing for the respective parties.

10. The petitioner was serving as Shristedar / Court Master with the City Civil Court, Ahmedabad and it is not in dispute that the post of Shristedar / Court Master is a post of responsibility and sensitive post. The petitioner was charge sheeted for number of charges which are referred to hereinabove and the Departmental Inquiry was initiated against the petitioner. The petitioner submitted his defense and participated in the Departmental proceedings. The petitioner was given fullest opportunity to represent his case before the Disciplinary Authority. Considering the observations made by the Inquiry Officer in its report more particularly Paragraph Nos. 7 and 8, it cannot be said that adequate opportunity had not been given to the petitioner by examining defence witnesses and cross examining witnesses examined

on behalf of the Department. In fact, delinquent had engaged a lawyer at a earlier stage of inquiry proceedings. However he dispensed with the services of the lawyer at a subsequent stage and orally participated in the inquiry without being assisted by the lawyer. The learned Advocate who was representing the delinquent before the inquiry authority retired as deliquent's Advocate and thereafter, the petitioner submitted purisis in which he did declared that he does not desire to advance any oral arguments but his written statement of defence be treated as arguments advanced by him. Thus, it cannot be said that the petitioner was not given opportunity or being assisted by the lawyer. Therefore, the contention on behalf of the petitioner that the petitioner was not given opportunity to examine defence witnesses, cross examining witness and was not permitted to engage lawyer, is factually incorrect.

11. After conclusion of the Departmental Inquiry, following points / charges came to be held to be proved in affirmative against the petitioner; that the order in question Exh. 34 was written by the delinquent without any instructions from the learned Judge Shri Atodaria and that the delinquent unauthorizedly retained records and proceedings of Civil Suit No. 6582/88 along with the matter and the order not having been signed by the Presiding Officer, the same was shown to obtain undue favour form the party; that the Civil Suit No. 5791 of 1987 was instituted on 15.10.1987 by one Vibuhushit

Trambaklal Oza as the sole proprietor of the firm of Jagannath Dholabhai as the plaintiff against the partnership firm of Payal Corporation and its partners Arvindkumar Maneklal Tailor and Raju Maneklal Tailor for recovery of money and that the delinquent had purchased one tenement for Rs. 1 lac admeasuring 90 Sq.Yards from Sunil Tailor. That similar suits filed against the two persons was not allotted to the any Court as it was not ripe and no decree could be passed in the suit as the delinquent some how managed to obtain illegally and retained the records of the said suit with *mala fide* intention of helping the defendants in that matter.

12. Considering the report of the Inquiry Officer and the having agreed that the findings of the learned Inquiry Officer and after fullest opportunity given to the petitioner, Disciplinary Authority and Principal Judge, City Civil Court, Ahmedabad passed impugned order of dismissal by specific observations that a person like delinquent cannot be allowed to be continued in Government service either on the establishment of the Court or in any other Department of the government. The Disciplinary Authority while imposing order of punishment of dismissal has observed as under:

> "11. Under the aforesaid facts and circumstances, in my opinion, a person like the delinquent cannot be allowed to

> continue in Government service either on the establishment of this Court or in any other department of the Government. In view of the conduct of the delinquent, which has emerged in the present case it is absolutely unthinkable that the delinquent could be allowed to continue in service on the establishment of this court because anywhere on the establishment of this court, he would have to deal with important documents and papers. The delinquent having gone to the length of tampering with the record by writing the order on the original notice of motion, of his own accord, assuming the position of a Judge, it would be absolutely unsafe and hazardous to retain the delinquent on any post on the establishment of this Court.
>
> 12. Having considering the matter from all the relevant angles, I am convinced that the punishment of dismissal from service which shall ordinarilly be a disqualification for further employment under Government is the only appropriate punishment that should be imposed upon the delinquent."

13. Even the Appellate Authority i.e.The High Court of Gujarat on administrative side has considered all the submissions and all the grounds raised in the appeal and has passed detailed speaking order rejecting the appeal. The contentions raised by the learned Advocate appearing on behalf of the delinquent are dealt with and the grounds submitted on behalf of the delinquent with regard to giving opportunity to lead further evidence by remanding the matter to the Inquiry Officer.

The Appellate Authority has also considered and dealt with the submission on behalf of the petitioner that order of punishment of dismissal is disproportionate and/or undue harsh. The Appellate Authority has considered the same and observed that considering the serious misconduct dereliction of duty exhibited and committed by the delinquent, he cannot be retained in Government service without detriment to the public interest or in the interest of administration. The Appellate Authority has observed that therefore, the contention that the punishment is harsh, cannot be accepted. Under the circumstances, it cannot be said the Appellate Authority has not considered ground (f) raised in the Appeal Memo.

14. Now so far as the decision in the case of *Director (Marketing), Indian Oil Corporation (supra)* relied upon by the learned Advocate for the petitioner is concerned, on facts of the present case, the same will not be of any assistance to the petitioner. In the case before the Hon'ble Supreme Court, the Appellate Authority simply reiterated the points set by the Disciplinary Authority while rejecting the appeal and remitted the matter to the Disciplinary Authority. As stated above on going through the decision of the Appellate Authority, it cannot be said that the Appellate Authority has independently not considered the matter and / or has not dealt with grounds raised in the appeal memo. The Appellate Authority has passed detailed speaking order considering

all the submissions made on behalf of the petitioner and the grounds mentioned in the appeal memo.

15. In the case of Govt. of *A.P. V/s. Mohd. Nasrullah Khan (supra)*, the Hon'ble Supreme Court has considered the scope of judicial review under Article 226 of the Constitution of India while dealing with the orders passed by the Disciplinary Authority and the Hon'ble Supreme Court has observed that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. It is also further held that its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. It is also further observed that judicial review is not akin to adjudication on merit by reappreciating the evidence as an Appellate Authority.

16. In the case of *Y.P.Sarabhai (supra)*, the Hon'ble Supreme Court has observed that factual finding of the Disciplinary Authority after holding a detailed enquiry and after going through elaborate evidence are not assailable in the courts unless the breach of principles of natural justice or the violation of any rules or any material irregularity on the face of the record is alleged and shown.

17. Division Bench of this Court in unreported judgment in the case of *J.H.Joshi (supra)* while dealing with the scope of judicial review of the discretion exercised by the employer to impose the particular penalty on the delinquent employee, after considering various decisions of the Hon'ble Supreme Court has observed that High Court cannot exercise appellate jurisdiction in such matters and substitute their opinion for the one formed by the disciplinary authority and the punishment imposed by the competent authority cannot be modified / substituted with a lesser penalty unless the Court is satisfied that the same is grossly or shockingly disproportionate or is so unreasonable that no person of reasonable prudence would have imposed such punishment in the facts and circumstances of the case.

18. Now considering the facts of the case on hand, the petitioner was serving as (Shristedar / Court Master) in the Court, the charges proved against the petitioner are serious. The Disciplinary Authority as well as the Appellate Authority have specifically given a finding that a person like delinquent cannot be allowed to continue in Government service either on the establishment of the Court or in any other Department of the Government. The Disciplinary Authority has also observed that in view of the conduct of the delinquent which is emerged in the present case, it is absolutely unthinkable that the delinquent could be allowed to continue in service on the establishment of this Court

because anywhere on the establishment of this Court, he would have to deal with important documents and papers, the delinquent having gone to the length of tampering with the record by writing the order on the original notice of motion, of his own accord, assuming the position of a Judge, it would be absolutely unsafe and hazardous to retain the delinquent on any post on the establishment of this Court. Considering above, it cannot be said that the Disciplinary Authority as well as the Appellate Authority have committed any illegality and/or acted arbitrary in imposing punishment of dismissal upon the petitioner form the service as Shristedar / Court Officer.

19. In the facts and circumstances of the case, and considering the charges and misconduct proved against the petitioner, the only order which can be passed is the order of dismissal. Under the circumstances it cannot said that the order of punishment of dismissal is in any way disproportionate to the charges proved against the petitioner and / or same is undue harsh.

20. For the reasons stated above, the petition fails. Rule discharged. However, in the facts and circumstances of the case, there shall be no order as to costs.

[M.R.Shah, J.]

satish